

November 7, 2006

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

PRAIRIE BAND POTAWATOMI
NATION,

Plaintiff-Appellant,

v.

JOAN WAGNON, Secretary of the
Kansas Department of Revenue,

Defendant-Appellee,

WINNEBAGO TRIBE OF
NEBRASKA, HCI DISTRIBUTION,
THE KICKAPOO TRIBE OF
INDIANS OF THE KICKAPOO
RESERVATION IN KANSAS, THE
IOWA TRIBE OF KANSAS AND
NEBRASKA, AND THE SAC AND
FOX NATION OF MISSOURI,

Amici Curiae.

No. 03-3218

D.C. No. 99-CV-4071-JAR
(D. Kansas)
(241 F. Supp. 2d 1295 (Kan. 2003))

**OPINION ON REMAND FROM THE
UNITED STATES SUPREME COURT**

David Prager, III, Tribal Attorney, Prairie Band Potawatomi Nation, Mayetta,
Kansas, for Plaintiff-Appellant.

John Michael Hale, Special Assistant Attorney General, Kansas Department of
Revenue, Topeka, Kansas, for Defendant-Appellee.

Before **LUCERO**, **McKAY**, and **HARTZ**, Circuit Judges.

McKAY, Circuit Judge.

In view of the Supreme Court's decision in *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. ____, 126 S. Ct. 676 (2005), and after supplemental hearing, the prior decision of this court is vacated, as is the portion of the district court's opinion that applies the interest-balancing test. The order of the district court granting summary judgment in favor of Defendant is **AFFIRMED**.